

My name is David S. Mittleman. My professional address is 2827 E. Saginaw, Lansing, MI 48912.

I oppose SB 1115, 1116 (I have previously submitted general written testimony opposing SB 1110, 1115, 1116, 1117, and 1118 on 5/22/12)

Today I will try to be more specific and address issues raised by this committee on 5/22/12.

With regard to SB 1116, I find it ironic that doctors want to be treated like lawyers - They say; "the attorney judgment rule is a reasonable standard for negligence, that works for the legal community, adopting a similar standard for physicians seems equally reasonable" in support of SB 1116.

I say 2 wrongs don't make a right. Wrong for lawyers would be wrong for doctors

This judicially created concept flies in the face of hundreds of years of precedent as to what constitutes a reasonable standard of care or practice based on the literature and knowledge of one's peers.

What I don't hear the doctors saying is "I want to be treated like lawyers with regard to damages caps.... since lawyers don't have them, it's not fair that doctors have them"

Likewise with NOI (Notices of Intent) and AOM (Affidavits of Merit). "If lawyers don't have them we doctors shouldn't have them. It seems equally reasonable." I don't hear them saying that.

I thought it was particularly of interest when the sponsor of this bill was asked "well, what other states have this type of standard of care or standard of practice?" He punted to experts. The experts told you, "we will have to get back to you."

I looked for other jurisdictions. There are none.

To be fair, let's treat both professions equal. Let's reduce legislation...not increase it.

Let's eliminate caps, AOM, NOI and the "Attorney Judgment Rule".

Now SB 1115

It's bad, it's not fair. Caps already unfairly hurt children and traditional women homemakers.... women who don't work outside the home. Maybe they don't contribute "economically", that doesn't mean they don't contribute, so that their contribution can't be quantified. So don't let them put 'household services' into the "non-economic" pool to be capped. We don't do it that way in auto no-fault. It's considered an economic loss by the insurance industry in that tort arena.

As far as the remainder of the bill it reads like a laundry list of what can we reduce a verdict by:

- passed paid
- passed capped
- all future
- all future "less collateral source determined to be collectible..." what is that?
- less ratio
- less costs
- less %
- then reduce to present value using a compounding calculation instead of simple reduction

All of that equals "Economic Immunity".

And why?..... The statistics they cited said that the legislation established in 1993 has worked already. Michigan already has strong medical malpractice reform.

The thought that if one dose of medication is good, two must be better isn't accurate and in some instances can cause an overdose!

The system isn't broken like it was in 1993, so there is no reason to fix it.

We don't need more "tort reform".

We need "safety reform" and "insurance reform", if anything.

For almost 30 years now I have been talking to, consoling people and families who have been devastated by actions that fell below the standard of care as set by the medical community. None of the doctors or hospitals intended to do the harm, meant to do the harm any more than the person who wasn't paying attention and went through a red light and caused your son or daughter to be a quadriplegic or killed your wife, husband or so on.

The medical providers took on a huge responsibility when they decided to do what they chose. With responsibility comes accountability. Without accountability, what is the incentive to act within the acceptable standard of care?

I have a small law firm here in Lansing. We are just about the last law firm to handle medical malpractice cases because they are already so expensive, so time-consuming, so difficult to win with all the current laws, restrictions, and procedural hurdles that negligent doctors and hospitals don't need any more privilege, protection, and immunity.

Between me, my partner, and the other three lawyers at our office, we review an average of 500 allegations of medical malpractice each year. At most we investigate 50. That means 450 people we tell "sorry, but we can't help you," even if the malpractice is clear but the damages, the injury isn't significant enough because of all the protection already afforded to medical providers. Of the 50 we investigate, no more than 5 do we actually make a claim, put into litigation, or settle because the doctor or the hospital admits they breached the standard of care.

With these bills that you propose here today, even those 5 per year - the most egregious injuries with admitted negligence or deviation from the standard of care as established by their own medical people, because there is no case until someone with the same background, training, and experience says so, even those 5 people or families will not be able to hold doctors and hospitals accountable.

That is not fair, not right, not good medicine, and not good for patient safety.

Let me close by saying - if people have no recourse because they can't hold doctors and hospitals accountable in a civil fashion, they will take the law into their own hands. I don't condone the concept, but have talked more than one person down from trying to do to the doctor what happened to their loved one.